the stock such as to make her absolute owner. *Teague* v. *Abbott,* (Ind. App. 1912) 100 N. E. 27.

The requisites of a valid gift *mortis causa* have been given as: (1) it must be made in contemplation of death; (2) it must be the intention of the owner to part with the property; (3) a delivery appropriate with the thing given must be made; (4) death must ensue as a result of the illness which prompted the gift. See WILLIAMS, EXECUTORS, p. 770 et seq. The only question raised in the principal case was whether there was a delivery of the bank stock. It was insisted by the early chancellors that there must be actual delivery of the thing. *Ward* v. *Turner,* 2 Ves. Sr. 431; *Drury* v. *Smith,* 1 P. Wms. 404; *Snellgrove* v. *Bailey,* 3 Atk. 314; *Parish* v. *Stone,* 14 Pick. 198. But ever since *Jones* v. *Selby,* Prec. in Ch. 300, the delivery of that which would give the donee the power to demand the subject of the gift, or the exclusive power to reduce it to possession, has been held a sufficient delivery of the subject of the gift, as exchequer tallies, *Jones* v. *Selby, supra;* a key to a trunk or a wine-cellar, *Kenistons* v. *Sceva,* 54 N. H. 24; *Meach* v. *Meach,* 24 Vt. 591; *Devol* v. *Dye,* 123 Ind. 321; *Wilcox* v. *Mattison,* 53 Wis. 23; *Debinson* v. *Emmons,* 158 Mass. 592; *Newman* v. *Bost,* 122 N. C. 524; *Thomas* v. *Lewis,* 89 Va. 1. It has been held that if the donee is already in possession of the subject of the gift, no delivery at all will be necessary to constitute a valid gift *causa mortis. Cain* v. *Moon* (1896) 2 Q. B. Div. 283; even when such possession is only constructive, *Stevens* v. *Stevens,* 2 Hun. 470, but mere accessibility to the donee has never yet been held to render delivery unnecessary. It is by no means possible to reconcile all the decisions, but the present decision must be classed as an extremely liberal one, along with *Hatcher* v. *Buford,* 60 Ark. 169; *Ellis* v. *Secor,* 31 Mich. 185; *Stephenson* v. *King,* 81 Ky. 425; *Stevens* v. *Stevens,* 2 Hun. 470. But if this class of cases keeps on growing, such cases will cease to be exceptions and become the best of all illustrations of that often quoted but hitherto little followed test of delivery, that it shall be as good as can be made under the circumstances.

INSURANCE—BREACH OF CONDITIONS.—The employment of mechanics in making repairs, and the use of a gasoline torch in removing old paint, which directly causes the loss, does not as a matter of law avoid the policy. *Lebanon County* v. *Franklin Fire Insurance Co. of Philadelphia,* (Penn. 1912) 85 Atl. 419.

The principles underlying this decision are in accord with the authorities. Thus, (1) whether there was an increased "hazard" is for the jury to determine. *Poole* v. *Ins. Co.,* 91 Wis. 530, 65 N. W. 54, 51 Am. St. Rep. 919; II COOLEY, BRIEFS ON INSURANCE, 1495. (2) The condition against "repairs" is not broken if the jury finds that those made were consistent with proper care and preservation of the premises, *First Cong. Church* v. *Holyoke Ins. Co.,* 158 Mass. 475, 19 L. R. A. 587; MAY INS. §224. Although under the Standard Policy the test of "reasonableness" of the repairs has been held to be superseded by the provision for fifteen days for repairs, *German Ins. Co.* v. *Hearne,* 117 Fed. 289, 54 C. C. A. 527, 59 L. R. A. 492, certiorari

denied, 188 U. S. 742; *Newport Imp. Co.* v. *Home Ins. Co.*, 163 N. Y. 237, 57 N. E. 475. (3) The condition against keeping or using gasoline on the premises is not literally construed. While interpretation has made its meaning very indefinite, the courts seem to have applied various tests in order to do justice to the particular facts before them. In a situation similar to the principal case it was said that the reasonable use of gasoline was an implied exception to the condition. *First Cong. Church* v. *Holyoke Ins. Co., supra.* See *Smith* v. *German Ins. Co.*, 107 Mich. 270, 65 N. W. 236, 30 L. R. A. 368. Its use for cleaning purposes will not avoid the policy, *Columbia Planing Mill* v. *Am. Ins. Co.*, 59 Mo. App. 204; *Arnold* v. *Am. Ins. Co.*, 148 Cal. 660, 84 Pac. 182. So a use upon one occasion only, although such use causes the loss, has been held not to be a breach, *Springfield Ins. Co.* v. *Wade*, 95 Tex. 598, 68 S. W. 977, 93 Am. St. Rep. 870. See *Angier* v. *Western Assur. Co.*, 10 S. D. 82, 71 N. W. 761, 65 Am. St. Rep. 685. But see *contra, Wheeler* v. *Traders' Ins. Co.*, 62 N. H. 450, 13 Am. St. Rep. 582. About as certain a test as can be laid down is to inquire whether the use in the given case was such a one as the parties to the contract had in mind would be a "necessary and contemplated use of the property." Anything beyond that is a breach, *Heron* v. *Phoenix Ins. Co.*, 180 Pa. 257, 40 Wkly. Notes Cas. 55, 36 L. R. A. 517, 57 Am. St. Rep. 638; *Kyte* v. *Com. Assur.* Co., 149 Mass. 116, 21 N. E. 361, 3 L. R. A. 508. If a breach has actually occurred, some courts hold the policy is only suspended during the breach, *Phoenix Ins. Co.* v. *Lawrence*, 4 Met. (Ky.) 9, 81 Am. Dec. 521. However, the weight of authority is that once there is a breach, the policy is void at the election of the insurer, whether the breach contributed to the loss or not, *Penn. Ins. Co.* v. *Faires*, 13 Tex. Civ. App. 111; *Norwaysz* v. *Thuringia Ins. Co.*, 204 Ill. 334, 68 N. E. 551; *Boyer* v *Ins. Co.*, 124 Mich. 455, 83 N. W. 124, 83 Am. St. Rep. 338; *Bastian* v. *British Assur. Co.*, 143 Cal. 287, 77 Pac. 63, 66 L. R. A. 255.

INSURANCE—DIVISION OF SURPLUS—ACCOUNTING.—A statute provided that the surplus of a life insurance company should be divided among the policy holders "equitably and ratably, as the directors of said company shall and may from time to time ascertain, determine and report for division." *Held*: Policy holders are entitled to an accounting when the directors arbitrarily fix the amount to be divided. *White* v. *Provident Life & Trust Co.*, (Pa. 1912) 85 Atl. 463.

The insurance company is not a trustee of the surplus for the policy holders, but sustains the relation merely of a debtor to a creditor. *Cohen* v. *N. Y. Ins. Co.*, 50 N. Y. 610; *Equitable Life Assur. Soc.* v *Brown*, 213 U. S. 25. Accordingly an accounting cannot be compelled by a policy holder on the theory of enforcing a trust, *Pierce* v. *Equitable Assur. Soc.*, 145 Mass. 56, 12 N. E. 858, 1 Am. St. Rep. 433; *Grieb* v. *Equitable Life Assur. Soc.*, 189 Fed. 498. But Massachusetts has held that the policy holder is equitably entitled, and that the insurance company "has no right to withhold the surplus as a corporation may withhold profits from a stockholder." Conse-